IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.11116 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**NO**
2	To be referred to the Reporter or not ?	**NO**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	**NO**
5	Whether it is to be circulated to the civil judge ?	**NO**

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PATEL RUTULKUMAR ROHITKUMAR - Petitioner(s)
Versus
THE GUJARAT UNIVERSITY & 2 - Respondent(s)

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Appearance :
MR KS NANAVATI, SENIOR COUNSEL, with MR SAURABH G AMIN, ADVOCATE for NANAVATI ASSOCIATES for the Petitioner
MR KRUNAL PANDYA, AGP for Respondent(s) : 1-2,
MR PRADEEP PATEL for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
Date : 22/06/2007
ORAL JUDGMENT

(1) Heard the learned advocates appearing for the respective parties. Considering the scope of the controversy the petition is taken up for final hearing and disposal today. RULE. The

learned advocates appearing for the respective respondents are directed to waive service of rule.

(2) The facts in brief are that the petitioner student has successfully cleared Science stream examination of 12th Standard conducted by Gujarat Secondary and Higher Secondary Education Board, Gandhinagar in October 2005. The petitioner-student also cleared the entrance examination popularly termed as GUJCET in April 2006 and figures at Sr. No.37717 in the merit list. The petitioner thus became eligible to apply for admission to Degree Engineering for academic year 2006-2007.

(3) Respondent No.3, a private unaided institution, runs various engineering courses, including that of Civil Engineering having approved strength of 30 seats for the said course. For academic year 2006-2007 22 seats were filled up by respondent No.2-Committee,

while 8 seats were permitted to be filled up under the Management Quota by respondent No.3-Institute in accordance with the procedure specified for filling up the Management Quota Seats. Admittedly, as on 26.11.2006 the entire admission process was over and in so far as respondent No.3-Institute is concerned, no seats were vacant.

(4) However, one Joshi Yasho Lalitbhai, who was admitted in the State Quota Seats, vacated his seat on 07.12.2006. Therefore, respondent No.3-Institute issued a public advertisement on 08.12.2006 in Gujarati Daily 'Divya Bhaskar'. In response thereto the petitioner-student applied and was granted admission. On the same day respondent No.3-Institute forwarded the details of the petitioner-student for approval to respondent No.2-Committee. Till the date the petition was filed i.e. 23.04.2007 and even thereafter till today there has been no response from respondent No.2-Committee. However, on

06.03.2007 respondent No.1-University wrote to respondent No.3-Institute that as name of the petitioner-student did not appear in the list, approved and endorsed by respondent No.2-Committee, the petitioner-student cannot be granted enrollment. The petitioner has, therefore, challenged the aforesaid communication issued by respondent No.1-University as well as inaction on the part of respondent No.2-Committee.

(5) Learned advocate for the petitioner has submitted that the petitioner-student has done everything that the petitioner-student is required to do and in absence of any response from respondent No.2-Committee the career of the petitioner cannot be put in jeopardy. That respondent No.1-University cannot refuse enrollment on such a technical plea of non-endorsement by respondent No.2-Committee.

(6) Learned Assistant Government Pleader appearing on behalf of respondent No.2-Committee has

placed reliance on the affidavit-in-reply dated 19.06.2007 to submit that in the first instance once there was no vacancy at the point of time when the admission process got over Rule 19 of the “Rules for Admission to First Year Course of Degree Engineering and Degree/Diploma Pharmacy, after standard 12 Science stream” (the Admission Rules) cannot be made applicable to the petitioner's case. The second submission was to the effect that even if Rule 19 of the Admission Rules was to be invoked the same could be applicable only in relation to the seats which remain vacant at the end of admission process and not seats which have fallen vacant subsequently in point of time. The third submission was that the seat which had fallen vacant was of the State Quota Seats and, therefore, it would not open to respondent No.3-Institute to admit the student on its own as the Management Quota Seats had already been filled up in entirety. It was further submitted that the last merit

list number, for which admission had been granted, was 28701 while the petitioner's merit list number was 37717 and, therefore, there were other meritorious students before the petitioner in the merit list, who were required to be granted admission.

(7) Lastly, relying on averments made in Paragraph No.8 of the affidavit-in-reply, it was submitted that seats of State Quota vacated by the students after completion of the admission process, are filled up in the immediately next academic year by the diploma students being admitted directly in the third semester in Diploma to a Degree Course.

(8) The facts are not in dispute. On 26.11.2006 when the admission process was over all the seats of the open category and the management quota were filled up. But on 07.12.2006 one student vacated the seat to which he had been granted admission and, therefore, respondent No.3-Institution issued an advertisement

inviting applications from meritorious students. Admittedly, the petitioner was the only person who responded to the advertisement. Respondent No.3-Institution has forwarded relevant documents of the petitioner-student to respondent No.2-Committee. It is not the case of respondent No.2-Committee that the petitioner-student is otherwise not eligible for any reason whatsoever.

(9) It is true that a discretion is vested in respondent No.2-Committee to grant admission. However, it is required to be noted that a discretion vested in the authority has to be exercised not only in a reasonable manner, but within a reasonable time frame. An authority, in whom discretion is vested, cannot sit over the application without dealing with the said application and recording a finding one way or the other. This is exactly what respondent No.2-Committee has done in the present case. The Committee has refused to exercise

discretion vested in it. This is not permissible as per settled legal principles.

(10) The reasons which have come forth in the affidavit-in-reply have come on record for the first time. The petitioner-student and/or respondent No.3-Institute have never been informed about any of the grounds, on basis of which the petitioner does not deserve admission. In the circumstances, strictly speaking, these reasons need not be taken into consideration.

(11) However, even if one examines the reasons assigned in the affidavit-in-reply it is apparent that respondent No.2-Committee has no case. In so far as the applicability of Rule 19 of the Admission Rules is concerned, it only talks of seats remaining vacant after the admission process being over and the the modality to be adopted for filling up such seats. The Rule does not distinguish between the seats remaining vacant at the point of

time of completion of the admission process and seats falling vacant subsequently in point of time. In any view of the matter the distinction is no distinction as the net result either at the point of time when the admission process is completed or subsequently is the factum of a seat remaining vacant. In the present case, admittedly, a seat has fallen vacant and in the event it is not filled up it would remain vacant. Resources of an educational institution cannot be permitted to be frittered away by letting such seats remain vacant as was contended vide Paragraph No.8 of the affidavit-in-reply.

(12) The plea regarding other meritorious students being entitled to admission requires to be recorded only to be rejected. In the event any other meritorious student, whose name appears prior in the merit list i.e. before the name of the petitioner-student was awaiting admission it was open to respondent No.2-

Committee to allot the vacant seat to the said student and inform respondent No.3-Institute. By not having done so at the appropriate point of time the career of the petitioner-student cannot be put in jeopardy at this length of time.

(13) Similarly, the distinction between the State Quota Seats and the Management Quota Seats would loose its significance once the admission process is over. Even if respondent No.2-Committee wanted to maintain the said separation between the State Quota and the Management Quota Seats respondent No.2-Committee ought to have exercised the powers vested in it at an appropriate time. Even otherwise the law laid down by the Apex Court specifically states that in case of a private unaided institution the State has no role to play in so far as the admission process is concerned, except to the extent of overseeing through a Committee that the admission process is transparent and non-exploitative.

(14) The ground regarding admission being granted to diploma students in the subsequent academic year also does not merit acceptance for the simple reason that the Admission Rules do not provide for any such procedure of keeping seats vacant and granting admission to diploma students in subsequent year.

(15) In the aforesaid set of facts and circumstances it is apparent that on no count can respondent No.2-Committee withhold the approval and endorsement of the petitioner-student at such a belated stage. Respondent No.2-Committee is, therefore, directed to forward the communication of endorsement forthwith to respondent No.1-University, but not later than evening of 23.06.2007.

(16) Respondent No.1-University is directed to grant enrollment and permit the petitioner-student to take the examination without waiting for communication from respondent

No.2-Committee considering the fact that the annual examinations conducted by the University are to commence on and from 25.06.2007 as stated by the learned advocate of the petitioner.

(17) The petition is allowed accordingly in the aforesaid terms. Rule made absolute. There shall be no order as to costs. Direct service permitted.

Sd/-
[D.A. MEHTA, J]

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